

No. 21,176

IN THE

**United States Court of Appeals
For the Ninth Circuit**

SAMUEL GOLD, HOWARD GUY HALBETT,
and JOHN FRANK FUSCO,

Appellants,

VS.

UNITED STATES OF AMERICA,

Appellee.

APPELLANTS' PETITION FOR A REHEARING

RAYMOND E. SUTTON,
Suite 105, Friedman Building,
300 Fremont Street,
Las Vegas, Nevada,

*Attorney for Appellants
and Petitioners.*

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*To the Honorable J. Warren Madden, Judge of the
United States Court of Claims, the Honorable
Gilbert H. Jertberg, Circuit Judge, and the Hon-
orable James M. Browning, Circuit Judge:*

Appellants, pursuant to Rule 23 of the Rules of this Court, petition this Honorable Court for a rehearing of their appeal, which was decided by this Honorable Court on March 30, 1967, for the following reasons:

(1) That this Honorable Court did not pass upon point III of Appellants' Opening Brief, urging that the trial court erred when it denied Appellant Gold's Motion for Judgment of Acquittal as to Count I of the Indictment.

The Motion for Judgment of Acquittal was based upon the Appellee's failure to prove that the obscene film was transported in interstate commerce by a common carrier. The Indictment charged Appellant Gold with violating Title 18, Section 1462, United States Code. The Appellants' Opening Brief has set forth in its argument and legal propositions that the statute in question had not been violated by Appellant Gold merely placing the obscene film on a weighing scale at the United Air Lines freight area at McCarran Airport. The issue of whether the obscene film, based on the facts before the trial Court and this Court, constituted transportation in interstate commerce, was not answered by this Court in its Opinion filed on March 30, 1967.

(2) This Honorable Court did not pass on point V of Appellants' Opening Brief.

This Court in its Opinion did not specifically decide whether Appellant Halbett's conduct at Henderson, Nevada and Appellant Fusco's conduct at Newark, New Jersey, was sufficient as a matter of law to constitute both Appellants conspirators, as set forth in Count II of the Indictment.

The evidence showed Appellant Halbett's participation to be fleeting and a matter of a few minutes loading cartons into Appellant Gold's automobile. The evidence showed Appellant Fusco appeared at the United Air Lines freight counter in Newark, New Jersey with a woman and asked for certain packages.

This Court affirmed Appellants Halbett's and Fusco's convictions without decision on their conspiracy participation.

Wherefore, Petitioners request that a rehearing be granted.

Dated, Las Vegas, Nevada,
April 27, 1967.

Respectfully submitted,
RAYMOND E. SUTTON,
*Attorney for Appellants
and Petitioners.*

CERTIFICATE

I do hereby certify that the foregoing Petition for Rehearing is, in my judgment, well founded, and that it is not interposed for delay.

RAYMOND E. SUTTON.